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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA,)
11 Plaintiff,) Case No.: 2:12-cr-440-RCJ-(GWF)
12 vs.)
13 KIMBERLY FLORES,) **DEFENDANT'S MOTION TO RE-OPEN**
14 Defendant.) **THE SENTENCING HEARING TO**
15) **CORRECT CLEAR ERROR**
16) **[Expedited Hearing Requested]**

17 COMES NOW Defendant, KIMBERLY FLORES, by and through her attorney of record,
18 CRAIG W. DRUMMOND, ESQ., and hereby moves this Honorable Court to Re-Open the
19 Sentencing Hearing in this matter and modify the Final Order of Forfeiture to remove the *in*
20 *personam* criminal forfeiture money judgment of \$5,200,000.00 against the Defendant.

21 This motion is made and based on the enclosed affidavit of counsel, Points and
22 Authorities, all pleadings and papers on file herein and any oral argument requested by the Court
23 at the time of hearing.

24 An Expedited Hearing is requested because the United States is now in possession of an *in*
25 *personam* criminal forfeiture money judgment against the Defendant that was obtained in error.
26 Given the unknowns of what the government is planning to do with this money judgment in the
27 near future an Expedited Hearing is requested to resolve and address this issue.

I.

STATEMENT OF FACTS

3 On March 19, 2015, the Defendant, Ms. Kimberly Flores, was sentenced. As outlined
4 below as the sentencing hearing was already taking place and Assistant United States Attorney
5 walked to defense counsel's table, presented FOR THE FIRST TIME a Final Order of Forfeiture
6 and stated words to the effect "this is what your client already agreed to." See Exhibit A.
7 Thereafter, while sentencing was ongoing defense counsel looked through the Final Order of
8 Forfeiture regarding the money and property seized and all appearing in order did not object to the
9 language based on the limited time to review and the representations by the Assistant United
10 States Attorney that it reflected what was previously agreed to by the Defendant. Thereafter,
11 almost immediately after sentencing defense counsel reviewed the terms of the Plea Agreement
12 and noted that Ms. Flores NEVER AGREED or CONTRACTED with the United States for an *in*
13 *personam* criminal forfeiture money judgment of \$5,200,000.00. For some unknown reason, the
14 United States included this judgment in the Final Order of Forfeiture in the middle of listing the
15 property seized. See Exhibit A, P. 3:3-4. In fact, the Plea Agreement actually only authorized
16 such an *in personam* criminal forfeiture money judgment against Defendant Charles Horky. See
17 Exhibit B, P. 18:1-4. Thus, the present motion is being immediately filed to correct this error in
18 the sentencing of Ms. Flores.

II

AFFIDAVIT AND DECLARATION OF COUNSEL
IN SUPPORT OF MOTION FOR RECONSIDERATION

22 STATE OF NEVADA }
COUNTY OF CLARK } ss:

CRAIG W. DRUMMOND, ESQ, being first duly sworn, deposes and says:

24 1. That I am a duly licensed practicing attorney in the State of Nevada, County of Clark,
25 maintaining an office at Drummond Law Firm, P.C. 228 South Fourth St., First Floor, Las Vegas,
26 Nevada 89101, and am the CJA attorney of record for Defendant in the above entitled matter.

27 || 2. On March 19, 2015, the Defendant Ms. Kimberly Flores was sentenced

1 3. That while the sentencing hearing was already taking place an Assistant United States
2 Attorney walked to affiant defense counsel's table, and presented FOR THE FIRST TIME, a Final
3 Order of Forfeiture and stated words to the effect to defense counsel "this is what your client
4 already agreed to."

5 4. That prior to the sentencing on March 19, 2015, a proposed Final Order of Forfeiture
6 was NEVER PREVIOUSLY PROVIDED to the Defendant or defense counsel for review.

7 5. That while sentencing was ongoing affiant defense counsel looked through the Final
8 Order of Forfeiture regarding the money and property seized and all appearing in order did not
9 object to the language based on the limited time to review and the representations by the Assistant
10 United States Attorney that it reflected what was previously agreed to by the Defendant.

11 6. Thereafter, almost immediately after sentencing, affiant defense counsel reviewed the
12 terms of the Plea Agreement and noted that Ms. Flores NEVER AGREED or CONTRACTED
13 with the United States for an *in personam* criminal forfeiture money judgment of \$5,200,000.00.

14 7. Affiant defense counsel has no idea why United States included this judgment in the
15 Final Order of Forfeiture in the middle of listing the property seized as this WAS NEVER
16 DISCUSSED between parties during negotiations, and IS CONTRARY TO THE TERMS OF
17 THE PLEA AGREEMENT. See Exhibit A, P. 3:3-4.

18 8. That affiant defense counsel is not implying or alleging that the United States
19 intentionally misrepresented the terms of the Final Order of Forfeiture or engaged in unethical
20 activity, but rather that his representations about the content of the Plea Agreement were clearly
21 wrong and in error.

22 9. The Plea Agreement in this case actually only authorized such an *in personam* criminal
23 forfeiture money judgment against Defendant Charles Horky. See Exhibit B, P. 18:1-4.

24 10. That an Expedited Hearing is requested because the United States is now in possession
25 of an *in personam* criminal forfeiture money judgment against the Defendant that was obtained in
26 error. Given the unknowns of what the government is planning to do with this money judgment in
27 the near future an Expedited Hearing is requested to resolve and address this issue.

28

1 10. I sign and declare under penalty of perjury that the above statement is true and
2 correct.

3
4
5 CRAIG W. DRUMMOND, ESQ.
6 Nevada Bar No. 011109
7
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9 NOTARIZATION
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12 Subscribed and Sworn to me on this 19 of March, 2015.
13

14 
15 NOTARY PUBLIC
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18 III.
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21 LAW
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23 Under Federal Rule of Criminal Procedure 35(a), "within 14 days after sentencing, the
24 court may correct a sentence that resulted from arithmetical, technical, or other clear error."

25 Based upon the above affidavit of counsel, there was clear error in signing an *in personam*
26 criminal forfeiture money judgment of \$5,200,000.00 when this was not agreed upon between the
27 parties, inconsistent with the Plea Agreement, and clearly agreed to in error by counsel during
28 sentencing when counsel had seconds to review the proposed Final Order of Forfeiture and
counsel for the government orally represented to defense counsel that the Forfeiture contained the
terms of the Plea Agreement – when in fact it did not.

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1 IV.
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3 **CONCLUSION**
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5 WHEREFORE, the Defendant requests this Honorable Court re-open the Sentencing
6 Hearing in this matter pursuant to Federal Rule of Criminal Procedure 35(a) and modify the Final
7 Order of Forfeiture to remove the *in personam* criminal forfeiture money judgment of
8 \$5,200,000.00
9

10 DATED this 19 of March, 2015.
11

12 DRUMMOND LAW FIRM, P.C.
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14 Nevada Bar No. 11109
15 228 S Fourth Street, First Floor
16 Las Vegas, NV 89101
17 T: (702) 366-9966
18 F: (702) 508-9440
19 Craig@DrummondFirm.com
20 Attorney for Defendant
21

22 ORDER
23

24 IT IS SO ORDERED this 25th day of March, 2015.
25

26 
27 ROBERT C. JONES
28

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 19 day of March 2015, the undersigned served the
3 foregoing DEFENDANT'S MOTION TO RE-OPEN THE SENTENCING HEARING TO
4 CORRECT CLEAR ERROR on all counsel of record pursuant the CM/ECF filing system

5 
6

7 An Employee of the DRUMMOND LAW FIRM

Exhibit A

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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 UNITED STATES OF AMERICA,)
9 Plaintiff,)
10 v.) 2:12-CR-440-RCJ-(GWF)
11 KIMBERLY FLORES,)
12 Defendant.)

13 **FINAL ORDER OF FORFEITURE**

14 On July 16, 2014, the United States District Court for the District of Nevada entered a
15 Preliminary Order of Forfeiture pursuant to Fed. R. Crim. P. 32.2(b)(1) and (2); Title 18, United States
16 Code, Section 1963(a)(1), (a)(2), (a)(3), and (m); Title 18, United States Code, Section 981(a)(1)(C)
17 and Title 28, United States Code, Section 2461(c); and Title 21, United States Code, Section 853(p)
18 based upon the plea of guilty by defendant KIMBERLY FLORES to the criminal offense, forfeiting
19 the property set forth in the Plea Agreement, the Bill of Particulars, and the Forfeiture Allegation of
20 the Indictment and shown by the United States to have the requisite nexus to the offense to which
21 defendant KIMBERLY FLORES pled guilty. Indictment, ECF No. 1; Bill of Particulars, ECF No. 92;
22 Change of Plea, ECF No. 172; Preliminary Order of Forfeiture, ECF No. 177; Plea Agreement, ECF
23 No. 187.

24 This Court finds the United States of America published the notice of forfeiture in accordance
25 with the law via the official government internet forfeiture site, www.forfeiture.gov, consecutively
26 from July 23, 2014, through August 21, 2014, notifying all potential third parties and notified known

1 third parties by personal service or by regular mail and certified mail return receipt requested, of their
2 right to petition the Court. Notice of Filing Proof of Publication, ECF No. 185.

3 Bank of George, T. Ryan Sullivan, President was personally served with the Notice and
4 Preliminary Orders of Forfeiture on August 19, 2014, by the United States Marshals Service. Notice
5 of Filing Service of Process, ECF No. 184, p. 3-17.

6 Bank of George, Alan C. Sklar, Registered Agent was personally served with the Notice and
7 Preliminary Orders of Forfeiture on August 19, 2014, by the United States Marshals Service. Notice
8 of Filing Service of Process, ECF No. 184, p. 18-32.

9 CT Corporation, Registered Agent for American Express Company was served via regular
10 and certified mail with the Notice and Preliminary Orders of Forfeiture on August 8, 2014. Notice of
11 Filing Service of Process - Mailing, ECF No. 200, p. 2-20.

12 Kenneth I. Chenault, Chairman and CEO of American Express Company was served via
13 regular and certified mail with the Notice and Preliminary Orders of Forfeiture on September 4, 2014.
14 Notice of Filing Service of Process - Mailing, ECF No. 200, p. 2-16, 21-24.

15 This Court finds no petition was filed herein by or on behalf of any person or entity and the
16 time for filing such petitions and claims has expired.

17 This Court finds no petitions are pending with regard to the assets named herein and the time
18 for presenting such petitions has expired.

19 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all right,
20 title, and interest in the property hereinafter described is condemned, forfeited, and vested in the
21 United States of America pursuant to Fed. R. Crim. P. 32.2(b)(4)(A) and (B); Fed. R. Crim. P.
22 32.2(c)(2); Title 18, United States Code, Section 1963(a)(1), (a)(2), (a)(3), and (m); Title 18, United
23 States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c); and Title 21,
24 United States Code, Section 853(n)(7) and (p) and shall be disposed of according to law:

25 1. Twenty-five thousand eight hundred seventy-three dollars and ten cents (\$25,873.10) in
26 United States Currency; and

- 1 2. Seven thousand dollars (\$7,000) in United States Currency (all of which constitutes
2 "property"); and
- 3 3. an *in personam* criminal forfeiture money judgment of \$5,200,000 in United States
4 Currency including:
 - 5 a. One (1) stainless steel Rolex Oyster Perpetual Date Submariner, black dial and bezel,
6 40mm, Movement #31867604, Model #16610 T, Serial Z840628, 134 grams;
 - 7 b. One (1) 18k yellow gold IWC Schaffhausen chronograph automatic wristwatch with
8 leather, stamped on back 2684354 INTERNATIONAL WATCH CO., two sub dials, 41
9 mm case, 104.6 grams;
 - 10 c. One (1) 18k yellow gold Rolex Oyster Perpetual Superlative Chronometer Cosmograph
11 Daytona wristwatch and band, Serial #K258882, Model #116528, Band #78498,
12 movement #C 0255271, white dial with three white sub dials having gold bezels, 39mm
13 case, 179.3 grams;
 - 14 d. One (1) 18k yellow gold Cartier Pasha Chronograph date wristwatch with leather band
15 with 18k fold-over hidden clasp, Case #319453MG, presentation back, 38.4mm case,
16 white dial with three sub dials and date, 108.8 grams;
 - 17 e. One (1) stainless steel Girard-Perregaux Ferrari Chronograph wristwatch with leather
18 band, stamped on back with Girard-Perregaux, Ferrari, AN 853 Ref 8020, Manufacture
19 specialement pour FERRARI, black dial with prancing horse, three black sub dials and
20 a date window, luminous hour markers and hands, 38mm case, 72.8 grams; and
 - 21 f. Any and all ownership interest that defendant may hold in CLS Nevada, LLC, and any
22 licenses, certificates or medallions held or used by CLS or any affiliated.

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all forfeited funds,
24 including but not limited to, currency, currency equivalents, certificates of deposit, as well as any
25 income derived as a result of the United States of America's management of any property forfeited
26 herein, and the proceeds from the sale of any forfeited property shall be disposed of according to law.

1 The Clerk is hereby directed to send copies of this Order to all counsel of record and three
2 certified copies to the United States Attorney's Office.

3 DATED this ____ day of March, 2015.

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6 UNITED STATES DISTRICT JUDGE

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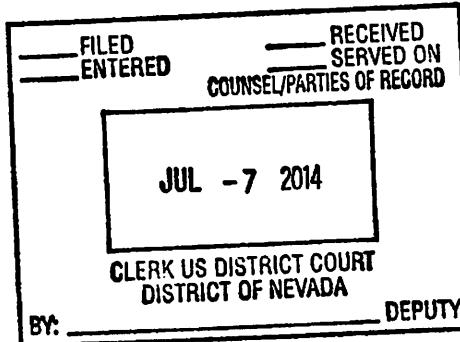
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Exhibit B

1 Daniel G. Bogden
2 United States Attorney
3 District of Nevada
4 Timothy S. Vasquez
5 Assistant United States Attorney
6 333 Las Vegas Boulevard South, Suite 5000
7 Las Vegas, Nevada 89101
8 702-388-6336



5
6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
-00-

8
9 UNITED STATES OF AMERICA,

10 Plaintiff

Case No. 2:12-CR-440-RCJ-GWF

11 vs.

12 [2] KIMBERLY FLORES,

PLEA AGREEMENT UNDER
FED.R.CRIM.P. 11 (c)(1)(A & B)

13 Defendant

14 THE UNITED STATES OF AMERICA, by the United States Attorney and undersigned
15 Assistant United States Attorney, and defendant KIMBERLY FLORES, with the advice and
16 counsel of her undersigned attorney, submit this Plea Agreement pursuant to Fed.R.Crim.P.
17 11(c)(1)(A and B).

18
19 I. SCOPE OF AGREEMENT

20 The parties to this Plea Agreement are the UNITED STATES OF AMERICA and
21 KIMBERLY FLORES, the defendant. This Plea Agreement binds defendant and the United
22 States Attorney's Office for the District of Nevada. It does not bind any other prosecuting,
23 administrative, or regulatory authority, the United States Probation Office, or the Court. The
24 Plea Agreement sets forth the parties' agreement regarding criminal charges referenced in the

1 Plea Agreement and applicable sentences, fines, restitution and forfeiture. It does not control or
2 prohibit the UNITED STATES or any agency or third party from seeking any other civil or
3 administrative remedies directly or indirectly against defendant.

4

5 **II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS**

6 A. **Guilty Plea:** Defendant knowingly and voluntarily agrees to plead guilty to the
7 charge that she conspired with others to conduct, or to participate in the conduct of, an
8 enterprise engaged in a pattern of racketeering activity in violation of 18 U.S.C. § 1962(d) as set
9 forth in Count One of the indictment in this case. The Defendant also agrees to the forfeiture of
10 the property set forth in this Plea Agreement, the Bill of Particulars, and the Forfeiture
11 Allegations of the Indictment.

12 B. **Waiver of Trial Rights:** Defendant understands that she is presumed innocent
13 and has the right to maintain her plea of not guilty and require that the government prove her
14 guilt beyond a reasonable doubt at trial. Defendant acknowledges that she has been advised
15 and understands that by entering a plea of guilty she is waiving – that is, giving up – her right to
16 a trial and related rights guaranteed to all defendants by the Constitution and laws of the United
17 States. Specifically, defendant is giving up:

18 (1) The right to trial by jury (or to a trial by a judge if the parties both were to so
19 agree);
20 (2) The right to confront and cross-examine the witnesses against her at trial;
21 (3) The right to remain silent with assurance that her silence could not be used
22 against her in any way;
23 (4) The right to testify in her own defense at trial if she so chooses;
24 (5) The right to compel witnesses to appear at trial and testify in her behalf; and

(6) The right to have the assistance of an attorney at all stages of such proceedings.

2 C. **Withdrawal of Guilty Plea:** Defendant will not seek to withdraw her guilty
3 plea after she has entered it in court.

4 D. **Additional Charges:** Provided that defendant fulfills all of her promises and
5 responsibilities under this Plea Agreement, the UNITED STATES agrees to move to dismiss
6 any additional charges pending against defendant in this case at the time of sentencing, and
7 agrees not to bring additional charges against defendant arising out of the investigation in the
8 District of Nevada which culminated in this Plea Agreement and based on conduct known to the
9 United States Attorney's Office for the District of Nevada with the exception of charges
10 pertaining to any crimes of violence. The UNITED STATES expressly reserves the right to
11 bring charges for any additional crime of violence as defined in 18 U.S.C. § 16.

III. ELEMENTS OF THE OFFENSE

14 Count One of the indictment charges that during the span from September 2008 through
15 November 2012, defendant conspired with others, known and unknown, to conduct and
16 participate, directly and indirectly, in the conduct of affairs of the enterprise through a pattern of
17 racketeering activity in violation of 18 U.S.C. § 1962(d). This offense has two elements:

18 First, a conspiracy or agreement, as generally described in the Indictment,
19 existed between two or more persons to conduct or participate in the affairs of an
20 enterprise that was (or would have) engaged in or affected interstate or foreign
21 commerce; and

22 Second, the defendant joined or became a member of the conspiracy with
23 knowledge of its purposes and that someone (not necessarily the defendant)
24 would conduct the enterprise's affairs, or participate, directly or indirectly, in the

1 conduct of the enterprise's affairs, through a pattern of racketeering activity, that
2 is, at least two racketeering acts.

3 See *Salinas v. United States*, 522 U.S. 52, 63-65 (1997); *United States v. Glecier*, 923 F.2d 496,
4 499 (7th Cir.1991); *United States v. Harris*, 695 F.3d 1125, 1131-33 (10th Cir. 2012); 18 U.S.C.
5 §§ 1961(1), 1961(5), 1962(c), and 1962(d). See also NINTH CIR. MODEL CRIMINAL JURY
6 INSTRUCTION 8.20 (2010 ed.).

8 | IV. FACTS SUPPORTING GUILTY PLEA

9 A. Defendant will plead guilty because she is, in fact and under the law, guilty of
10 the crimes charged.

11 B. Defendant acknowledges that if she elected to go to trial instead of pleading
12 guilty, the UNITED STATES could prove her guilt beyond a reasonable doubt and establish its
13 right to forfeit the specified property by preponderance of the evidence. Defendant further
14 acknowledges that her admissions and declarations of fact set forth below satisfy every element
15 of the charged offenses.

16 C. Defendant waives any potential future claim that the facts she admitted in this
17 Plea Agreement were insufficient to satisfy the elements of the charged offenses.

18 D. Defendant admits and declares under penalty of perjury that the facts set forth
19 below are true and correct.

20 (1) CLS Nevada, LLC, is a Nevada Limited Liability Company. Doing business as
21 "CLS Transportation, Las Vegas," CLS Transportation operated limousines and
22 provided limousine services in and around Las Vegas, Nevada. CLS Nevada,
23 LLC, and its managers, employees and associates constituted an enterprise as
24 defined by 18 U.S.C. § 1961(4), that is, a group of individuals associated in fact.

which enterprise was engaged in and the activities of which affected interstate and foreign commerce.

- (2) At all times material to the indictment, [2] KIMBERLY FLORES was employed as an office manager at CLS Transportation. [1] CHARLES HORKY owned and was the managing member of CLS Nevada, LLC.
- (3) Members of the enterprise combined and conspired to exploit CLS Transportation's position as a limousine service to conduct and facilitate a broad range of criminal activities.
- (4) Several of CLS Transportation's limousine drivers distributed controlled substances from CLS Transportation's limousines in violation of 21 U.S.C. § 841(a). Although HORKY did not directly participate in the distribution of controlled substances, he employed and retained drivers knowing that they were distributing controlled substances from CLS Transportation's vehicles. Further, HORKY required certain CLS Transportation's drivers engaging in illicit activities to pay him fees or surcharges ranging from hundreds to several thousand dollars per week.
- (5) Further, several members of the enterprise used CLS Transportation, the wire, and other instruments and conduits of interstate commerce, to promote, conduct, facilitate, and distribute proceeds from prostitution in Clark County, Nevada, a crime under Nevada law,¹ in violation of 18 U.S.C. §§ 1952(a)(1) and 1952(a)(3). HORKY directly participated in procuring prostitutes for CLS

¹ Under the laws of the State of Nevada, “[i]t is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.” Nevada Revised Statutes § 201.354. Although a county with a population of less than 700,000 (or, until June 2011, less than 400,000) are permitted to license brothels, *see* Nevada Revised Statutes § 244.345, the population of Clark County, Nevada, has exceeded that limit at all times material to this indictment. Moreover, Clark County ordinance 12.08.015 expressly prohibits prostitution.

1 Transportation's customers. Further, patrons occasionally paid for prostitution
2 services with credit cards, and members and associates of the enterprise used
3 CLS Transportation's accounts and the wire to process those credit card charges
4 and distribute the proceeds of that unlawful activity.

5 (6) The leaders and managers of the enterprise (including [1] CHARLES HORKY
6 and [2] KIMBERLY FLORES) engaged in access device fraud for purposes of
7 perpetuating and sustaining the enterprise. CLS Transportation and its
8 employees and associates offered limousines for hire and routinely provided
9 transportation to its customers for a fee. Customers often paid for those services
10 with credit cards or other access devices. Such charges were processed in the
11 offices of CLS Transportation and transmitted to American Express and its
12 processing agents by means of the interstate wire.

13 (a) The conspirators devised and executed a scheme to defraud American
14 Express and American Express card-holders and to obtain money by
15 means of false and fraudulent pretenses and representations. As part of
16 this scheme, the defendants obtained American Express access devices
17 and account numbers from customers of CLS Transportation. In addition
18 to the charges authorized by such customers, the defendants used the
19 American Express cards and account numbers to fraudulently conduct
20 unauthorized transactions under the pretense that the additional charges
21 had been authorized. The fraudulent charges were processed in the same
22 manner as authorized charges; the fraudulent charges were transmitted by
23 the defendants from CLS Transportation's office in Las Vegas, Nevada,
24 to American Express and its processing agents by means of the interstate

wire. In this manner, the defendants fraudulently obtained more than \$2,800,000 from American Express by means of false and fraudulent pretenses and representations and defrauded American Express and multiple American Express card-holders in violation of 18 U.S.C. §§ 1029(a)(5) and 1343.

(b) Many of the defrauded American Express card-holders contested the fraudulent charges. After contacting CLS Transportation in an attempt to verify contested charges, American Express frequently executed “charge-backs” to recover money fraudulently paid to CLS Transportation and notified management of CLS Transportation of the fraudulent transactions. Despite such notifications and charge-backs, the fraudulent transactions continued unabated. In light of the recurring fraudulent transactions from CLS Transportation, American Express eventually cancelled CLS Transportation’s merchant account. Defendants [1] **CHARLES HORKY** and [3]**ARCHIE GRANATA** combined and conspired with one another and others to circumvent American Express’s counter-measures and perpetuated the enterprise by fraudulently opening successive additional American Express merchant accounts under false names, aliases and nominees. The conspirators did not process fraudulent charges through these surreptitiously opened American Express accounts.

(7) The defendants also combined and conspired to fraudulently obtain money to meet short-term deficiencies through bank fraud in violation of 18 U.S.C. § 1344. More particularly, the members and associates of the enterprise combined and conspired to fraudulently obtain unauthorized sums of money from the Bank

1 of George (a financial institution insured under the Federal Deposit Insurance
2 Act) through a check-kiting scheme.²

3 (a) As part of that check-kiting scheme, leaders and managers of the
4 enterprise issued scores of checks drawn on CLS Transportation's payroll
5 accounts at the Bank of George knowing that those accounts did not
6 contain sufficient funds for payment of those checks.

7 (b) Although drawn from CLS Transportation's payroll accounts and
8 commonly made payable to employees and associates of CLS
9 Transportation, these checks were not for payment of wages or salaries.
10 Rather, these additional checks were issued to multiple employees and
11 associates of CLS Transportation who agreed as part of the scheme to
12 cash the checks (typically at a casino) and return the proceeds to the
13 management and leaders of the enterprise.

14 (c) Upon receiving the proceeds from checks cashed without sufficient
15 funds, the leaders and managers of the enterprise deposited, or caused
16 CLS Transportation's employees and associates to deposit, the proceeds
17 into CLS's Transportation's bank accounts to cover pre-existing
18 deficiencies and prior checks. In this manner and as part of this scheme,
19 the defendants knowingly issued themselves and their associates
20 thousands of checks drawn on a Bank of George account without
21 sufficient funds to honor those checks, in effect taking hundreds of
22 successive unauthorized loans from the Bank of George.

23
24 ² The Office of the Comptroller of the Currency in its Policy Guidelines for National Bank Directors has
defined check-kiting as "a method whereby a depositor ...utilizes the time required for checks to clear to obtain an
unauthorized loan without any interest charge."

1 (8) Defendant affirmatively admits that CLS Transportation and its managers,
2 employees and associates constituted an enterprise as defined by 18 U.S.C. §
3 1961(4), to wit: a group of individuals associated in fact, and that the enterprise
4 was engaged in, and its activities affected, interstate commerce. Defendant
5 further admits that she conspired with others to conduct, and to participate in the
6 conduct of, the enterprise's affairs through at least two acts of racketeering
7 activity within the span pattern of racketeering activity. Defendant joined or
8 became a member of the conspiracy with knowledge of its purposes and that
9 someone (not necessarily the defendant) would conduct the enterprise's affairs,
10 or participate, directly or indirectly, in the conduct of the enterprise's affairs,
11 through a pattern of racketeering activity comprised of at least two acts of
12 racketeering activity.

13 (11) Defendant admits that the property listed in Section X is: an interest acquired
14 or maintained from his criminal violations, or an interest in; security of; claim
15 against; or property or contractual right of any kind affording a source of
16 influence over; any enterprise which she established, operated, controlled,
17 conducted, or participated in the conduct of her criminal violations, or any
18 property constituting, or derived from, any proceeds obtained, directly or
19 indirectly, from racketeering activity or unlawful debt collection in her criminal
20 violations.

21 **V. COLLATERAL USE OF FACTUAL ADMISSIONS**

22 The facts set forth in Section IV of this Plea Agreement shall be admissible against
23 defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any purpose. If defendant does

1 not plead guilty or withdraws her guilty pleas, the facts set forth in Section IV of this Plea
2 Agreement shall be admissible at any proceeding, including a trial, for impeaching or rebutting
3 any evidence, argument or representation offered by or on defendant's behalf. Defendant
4 expressly waives all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 regarding the use
5 of the facts set forth in Section IV of this Plea Agreement.

6

7 **VI. APPLICATION OF SENTENCING STATUTES**

8 A. **Maximum Penalty:** The statutorily authorized penalty for a conspiracy to
9 conduct, or participate in the conduct, of an enterprise's affairs through a pattern of racketeering
10 activity in violation of 18 U.S.C. § 1962(d) as charge in Count One includes: a term of
11 imprisonment of not more than 20 years, *see* 18 U.S.C. § 1963; forfeiture, 18 U.S.C. § 1963; and
12 a fine of not greater than twice the gross loss or, alternatively, not more than \$250,000, *see* 18
13 U.S.C. § 3571(b).

14 B. **Factors Under 18 U.S.C. § 3553:** The Court must consider the factors set forth
15 in 18 U.S.C. § 3553(a) in determining defendant's sentence. However, the statutory maximum
16 sentence and any statutory minimum sentence limit the Court's discretion in determining
17 defendant's sentence.

18 C. **Supervised Release:** In addition to imprisonment and a fine, defendant will be
19 subject to a term of supervised release not to exceed three (3) years for each count of
20 conviction. *See* 18 U.S.C. § 3583(b)(2). Supervised release is a period of time after release
21 from prison during which defendant will be subject to various restrictions and requirements. If
22 defendant violates any condition of supervised release, the Court may order defendant's return
23 to prison for all or part of the term of supervised release, which could result in defendant

24

1 serving a total term of imprisonment greater than the statutory maximum prison sentence
2 identified above.

3 D. Special Assessment: Defendant will pay a \$100.00 special assessment per count
4 of conviction at the time of sentencing.

5

6 **VII. APPLICATION OF SENTENCING GUIDELINES PROVISIONS**

7 A. Discretionary Nature of Sentencing Guidelines: Defendant acknowledges that
8 the Court must consider the United States Sentencing Guidelines (“USSG” or “Sentencing
9 Guidelines”) in determining defendant’s sentence, but that the Sentencing Guidelines are
10 advisory, not mandatory, and the Court has discretion to impose any reasonable sentence up to
11 the maximum term of imprisonment permitted by statute.

12 B. Offense Level Calculations: The parties stipulate to and jointly recommend the
13 following calculation of the defendant’s Offense Level under the Sentencing Guidelines. The
14 parties agree that they will not seek to apply any other specific offense characteristics,
15 enhancements or reductions. Further, the defendant expressly understands and acknowledges
16 that neither these stipulations nor the Sentencing Guidelines bind the Court. Further, defendant
17 affirmatively acknowledges that the Court may impose any sentence within the statutory
18 maximum notwithstanding any applicable Sentencing Guidelines provisions.

19 Section 2E1.1 of the Sentencing Guidelines instructs that the Base Offense level for the
20 violation of 18 U.S.C. § 1962 charged in Count One of the indictment is either Level 19 or the
21 offense level applicable to the underlying racketeering activity, whichever is greater. In this
22 case, while the conspiracy involved a range of racketeering activities, the parties agree that the
23 most serious underlying offenses were bank fraud and wire fraud. The offense level for those
24 underlying racketeering activities exceeds Level 19 as assessed under Sentencing Guidelines §

1 2B1.1. The parties therefore agree and recommend that defendant's Base Offense Level is to
2 be assessed under § 2B1.1 of the Sentencing Guidelines as follows.

3 (1) Base Offense Level: 7 [USSG § 2B1.1(a)]

4 Section 2B1.1(a) of the Sentencing Guidelines instructs that where the offense of
5 conviction has a statutory maximum term of imprisonment of 20 years or more,
6 the Base Offense Level is 7. In this case, defendant's violation of 18 U.S.C. §
7 1962(d) has a statutory maximum term of imprisonment of 20 years resulting in
8 a Base Offense Level of 7.

9 (2) Specific Offense Characteristics:

10 (a) Amount of Actual and Intended Loss: + 18 [USSG § 2B1.1(b)(1)]

11 The government could prove, and defendant admits for purposes of this
12 plea agreement, that the conspiracy involved foreseeable losses and
13 attempted losses in excess of \$2,500,000, but less than \$7,500,000,
14 warranting an 18 Level increase to defendant's Base Offense Level under
15 Sentencing Guidelines § 2B1.1(b)(1).

16 (b) Victims: + 0 [USSG § 2B1.1(b)(2)]

17 Although members of the enterprise fraudulently used credit card account
18 numbers issued to hundreds of individuals, the identified fraudulent
19 transactions all resulted in charge-backs without financial loss to those
20 individuals. For purposes of this plea agreement, the parties agree and
21 stipulate that the conspiracy had two identifiable victims (American
22 Express and Bank of George) who were exposed to financial loss. The
23 parties accordingly recommend that no enhancement is warranted under
24 Sentencing Guidelines § 2B1.1(b)(2).

1 (c) Sophisticated Means: + 0 [USSG § 2B1.1(b)(10)]

2 The parties agree and stipulate for the limited purposes of this Plea
3 Agreement that defendant's offense were not substantially more
4 sophisticated than other instances of bank fraud, wire fraud and other
5 financial crimes that are also assessed under Sentencing Guidelines §
6 2B1.1. The parties therefore recommend that no enhancement is
7 warranted under Sentencing Guidelines § 2B1.1(b)(10).

8 (3) Role: + 0 [USSG §§ 3B1.1 & 3B1.2]

9 The parties stipulate for the purposes of this Plea Agreement that defendant was
10 not less culpable than most of the other participants and therefore a Mitigating
11 Role adjustment is not warranted. The parties further stipulate for purposes of
12 this Plea Agreement that an Aggravating Role adjustment is not warranted
13 because this defendant performed tasks in furtherance of the conspiracy at the
14 direction and under the control of [1] CHARLES HORKY.

15 (4) Acceptance of Responsibility: - 3 [USSG § 3E1.1]

16 Pursuant to § 3E1.1(a) of the Sentencing Guidelines, the UNITED STATES will
17 recommend that defendant receive a two-level downward adjustment for
18 acceptance of responsibility unless she:

19 (a) Fails to truthfully admit facts establishing a factual basis for the guilty
20 plea when she enters the plea;

21 (b) Fails to truthfully admit facts establishing the amount of restitution owed
22 when she enters her guilty plea;

23 (c) Fails to truthfully admit facts establishing the forfeiture allegations when
24 she enters her guilty plea;

- (d) Provides false or misleading information to the UNITED STATES, the Court, Pretrial Services, or the Probation Office;
- (e) Denies involvement in the offense or provides conflicting statements regarding her involvement or falsely denies or frivolously contests conduct relevant to the offense;
- (f) Attempts to withdraw her guilty plea;
- (g) Commits or attempts to commit any additional crime;
- (h) Fails to appear in court; or
- (i) Violates any condition of pretrial release.

Further, the UNITED STATES will move for an additional one-level downward adjustment for timely acceptance of responsibility under §3E1.1(b) of the Sentencing Guidelines provided that defendant communicates her decision to plead guilty in a sufficiently timely manner to allow the UNITED STATES to avoid preparing for trial and to efficiently allocate its resources.

(5) Joint Negotiations and Package Plea Agreements: -3

The defendant has knowingly and of her own accord and tactical judgment, chosen to join with her co-defendants [2] KIMBERLY FLORES and [3] ARCHIE GRANATA in negotiating this plea agreement with the government as part of a package plea in the interest of conserving government and judicial resources. *See generally United States v. Caro*, 997 F.2d 657, 658-59 (9th Cir.1993) (package plea agreements are permissible but they pose an additional risk of coercion not present when the defendant is dealing with the government alone requiring that trial court make a more careful examination of the voluntariness of a guilty plea). While the guilty plea of a single defendant would

1 not significantly alter the burden of production at trial, guilty pleas from these
2 three defendants would relieve the government of producing evidence pertaining
3 to the financial crimes and conserve judicial and government resources.

4 Therefore, if [1] CHARLES HORKY, [2] KIMBERLY FLORES and [3]
5 ARCHIE GRANATA all plead guilty pursuant to the parties' joint negotiations,
6 the UNITED STATES will recommend a 3 Level reduction for each of them.

7 (7) Total Offense Level: 19

8 The parties agree that no other offense characteristics, enhancements or
9 adjustments are applicable under the Sentencing Guidelines, and neither party
10 will request or present evidence to support Sentencing Guideline calculations not
11 contained in this plea agreement. The Sentencing Guidelines calculations
12 recommended by the parties, if adopted and applied by the Court, would result in
13 a Total Offense Level of 19 if defendant is awarded a full 3 Levels for
14 Acceptance of Responsibility and a 3 Level reduction for a package plea.

15 C. Criminal History Category: Defendant acknowledges that the Court may base
16 her sentence in part on her criminal record or Criminal History. The parties have not entered
17 into a stipulation regarding her Criminal History, and defendant understands and acknowledges
18 that the Court will determine her Criminal History Category under the Sentencing Guidelines.

19 D. Relevant Conduct: The Court may consider any counts dismissed under this
20 Plea Agreement and all other relevant conduct, whether charged or uncharged, in determining
21 the applicable Sentencing Guidelines range and whether to depart from that range.

22 E. Additional Sentencing Information: The stipulated Sentencing Guidelines
23 calculations are based on information now known to the parties. The parties may provide
24 additional information to the United States Probation Office and the Court regarding the nature,

1 scope, and extent of defendant's criminal conduct and any aggravating or mitigating facts or
2 circumstances. Good faith efforts to provide truthful information or to correct factual
3 misstatements shall not be grounds for defendant to withdraw her guilty plea.

4 Defendant acknowledges that the United States Probation Office may calculate the
5 Sentencing Guidelines differently and may rely on additional information it obtains through its
6 investigation. Defendant also acknowledges that the Court may rely on this and other additional
7 information as it calculates the Sentencing Guidelines range and makes other sentencing
8 determinations, and the Court's reliance on such information shall not be grounds for defendant
9 to withdraw her guilty plea.

10

11 **VIII. POSITIONS REGARDING SENTENCE**

12 A. **No Departures or Variance from the Sentencing Guidelines:** In consideration
13 of the parties' respective promises and benefits conferred under this Plea Agreement, neither
14 party will request a departure nor a variance from the Sentencing Guidelines sentencing range
15 as determined by the Court unless both parties agree in writing to the propriety of such a
16 departure or variance.

17 B. **Recommendation:** The parties will each recommend that the Court impose a
18 sentence within the Sentencing Guidelines recommended sentencing range determined by the
19 Court. Further, the UNITED STATES will recommend that the Court impose a sentence at the
20 lower end of the Sentencing Guidelines recommended sentencing range unless defendant
21 commits any act that could result in a loss of the downward adjustment for acceptance of
22 responsibility. Defendant acknowledges that the Court does not have to follow the parties'
23 recommendations. Notwithstanding its agreement to recommend a low-end sentence, the

24

1 UNITED STATES reserves its right to defend any lawfully imposed sentence on appeal or in
2 any post-conviction litigation.

3

4 **IX. RESTITUTION**

5 In exchange for benefits received under this Plea Agreement, defendant agrees to make
6 full restitution in an amount to be determined by the Court for all of the losses defendant caused
7 by her schemes or offenses, whether charged or uncharged, pled to or not, and by all of her
8 relevant conduct. 18 U.S.C. § 3663(a)(3). Defendant cannot discharge her restitution obligation
9 through bankruptcy proceedings. Defendant acknowledges that restitution payments and
10 obligations cannot offset or reduce the amount of any forfeiture judgment imposed in this case.

11

12 **X. FORFEITURE**

13 A. Defendant knowingly and voluntarily agrees to the abandonment, the civil
14 administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the following
15 United States currency:

16 (1) Twenty-five thousand eight hundred seventy-three dollars and ten cents
17 (\$25,873.10) in United States Currency; and
18 (2) Seven thousand dollars (\$7,000.00) in United States Currency.

19 B. As part of the UNITED STATES' plea agreement with co-defendant [1]
20 CHARLES HORKY, the UNITED STATES has agreed to compromise, settle and waive its
21 demand for a monetary judgment in the sum of five million two hundred thousand dollars
22 (\$5,200,000.00) if [1] CHARLES HORKY pays seven hundred fifty thousand dollars
23 (\$750,000.00) in United States Currency in the form of a cashier's check payable to the United
24 States Marshals Service and delivered to the Federal Bureau of Investigation prior to his

1 sentencing hearing. If [1] CHARLES HORKY fails to forfeit, tender and pay these sums prior
2 to his sentencing hearing, he has agreed to criminal forfeiture of an *in personam* money
3 judgment in the sum of five million two hundred thousand dollars (\$5,200,000.00) in United
4 States Currency. In that event, defendant [2] KIMBERLY FLORES knowingly and voluntarily
5 agrees to the abandonment, the civil administrative forfeiture, the civil judicial forfeiture, or the
6 criminal forfeiture of the following property which shall be applied toward that money
7 judgment:

- 8 (1) One (1) stainless steel Rolex Oyster Perpetual Date Submariner, black dial and
9 bezel, 40mm, Movement #31867604, Model #16610 T, Serial Z840628, 134
10 grams;
- 11 (2) One (1) 18k yellow gold IWC Schaffhausen chronograph automatic wristwatch
12 with leather, stamped on back 2684354 INTERNATIONAL WATCH CO., two
13 sub dials, 41 mm case, 104.6 grams;
- 14 (3) One (1) 18k yellow gold Rolex Oyster Perpetual Superlative Chronometer
15 Cosmograph Daytona wristwatch and band, Serial #K258882, Model #116528,
16 Band #78498, movement #C 0255271, white dial with three white sub dials
17 having gold bezels, 39mm case, 179.3 grams;
- 18 (4) One (1) 18k yellow gold Cartier Pasha Chronograph date wristwatch with leather
19 band with 18k fold-over hidden clasp, Case #319453MG, presentation back,
20 38.4mm case, white dial with three sub dials and date, 108.8 grams;
- 21 (5) One (1) stainless steel Girard-Perregaux Ferrari Chronograph wristwatch with
22 leather band, stamped on back with Girard-Perregaux, Ferrari, A N 853 Ref 8020,
23 Manufacture specialement pour FERRARI, black dial with prancing horse, three

1 black sub dials and a date window, luminous hour markers and hands, 38mm
2 case, 72.8 grams;

3 (6) Any and all ownership interest that defendant may hold in CLS Nevada, LLC,
4 and any licenses, certificates or medallions held or used by CLS or any affiliated
5 persons, agents or entities.

6 Provided that defendant [1] CHARLES HORKY forfeits, tenders and pays \$750,000.00
7 in United States currency in settlement of the forfeiture as set forth above, the UNITED
8 STATES will not seek forfeiture of substitute assets, including the licenses, certificates or
9 medallions held or used by defendant, CLS, or any affiliated persons, agents or entities,
10 and the United States will not take any position with the Nevada Transportation
11 Authority regarding the sale of such licenses, certificates or medallions. (This provision
12 does not bar the United States from providing information upon lawful request of
13 government agencies, regulatory authorities, pursuant to subpoenas, pursuant to proper
14 Freedom of Information Act requests, etc.)

15 **C. Forfeiture Distinct from Restitution, Assessments and Fines:** Defendant
16 understands and expressly acknowledges that the forfeiture of the property shall not be treated
17 as satisfaction of any assessment, fine, restitution, cost of imprisonment, or other penalty the
18 Court may impose upon the defendant in addition to the forfeiture. Defendant also
19 acknowledges that the amount of the forfeiture may differ from (and may be significantly
20 greater than) the amount of restitution.

21 **D. Waivers:** Defendant agrees not to contest or litigate the forfeiture of the
22 property, and she agrees not to file any claim, answer, petition, or other documents in any
23 proceedings concerning the property. Further, defendant expressly waives her substantive and
24 procedural rights regarding forfeiture of the property including:

- (1) Any trial or hearing (including any abandonment proceedings, civil administrative forfeiture proceedings, civil judicial forfeiture proceedings, or criminal forfeiture proceedings) to which she might otherwise be entitled regarding forfeiture of the property;
- (2) Any further notice to defendant, her agents, or her attorney regarding the abandonment, forfeiture and disposition of the property;
- (3) Service of process of any and all documents filed in this action or any proceedings concerning the property arising from the facts and circumstances of this case;
- (4) Any legal or equitable defense or objection to the forfeiture of the property including, but not limited to, any defense or objection that might be brought under the statute of limitations, CAFRA, and Rules 7 and 32.2 of the Federal Rules of Criminal Procedure;
- (5) Any defense or objection to the forfeiture of the property under the Constitution, including, but not limited to, any defense or objection that might be brought under the Due Process Clause and Double Jeopardy Clause of the Fifth Amendment, and the Excessive Fines Clause and the Cruel and Unusual Punishments Clause of the Eighth Amendment.

19 E. Entry of Order of Forfeiture: Defendant knowingly and voluntarily agrees to
20 the entry of an Order of Forfeiture of the property to the United States. Defendant further
21 agrees that forfeiture is immediately due and payable and subject to immediate collection by the
22 United States

1 **XI. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS**

2 Before or after sentencing, upon request by the Court, the UNITED STATES or the
3 Probation Office, defendant will provide accurate and complete financial information, submit
4 sworn statements, and/or give depositions under oath concerning her assets and her ability to
5 pay. Defendant will surrender assets she obtained directly or indirectly as a result of her crimes,
6 and will release funds and property under her control in order to pay any fine, forfeiture, or
7 restitution ordered by the Court.

8

9 **XII. DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS**

10 A. **Plea Agreement and Decision to Plead Guilty:** Defendant acknowledges that:

11 (1) She has read this Plea Agreement and understands its terms and conditions;
12 (2) She has had adequate time to discuss this case, the evidence, and this Plea
13 Agreement with her attorney;
14 (3) She has discussed the terms of this Plea Agreement with her attorney;
15 (4) The representations contained in this Plea Agreement are true and correct,
16 including the facts set forth in Section IV;
17 (5) she was not under the influence of any alcohol, drug, or medicine that would
18 impair her ability to understand the Agreement when she considered signing this
19 Plea Agreement and when she signed it;
20 (6) Defendant, with the advice and counsel of her attorney, had a choice to proceed
21 to trial rather than pleading guilty, and defendant decided and chose to enter her
22 guilty plea knowing of the charges brought against her, her possible defenses,
23 and the benefits and possible detriments of proceeding to trial; and
24 (7) Defendant decided to plead guilty voluntarily, and that no one coerced or

1 threatened her to plead guilty or enter into this Plea Agreement.

2 B. **Waiver of Appeal and Post-Conviction Proceedings:** Defendant knowingly
3 and expressly waives:

4 (1) The right to appeal any sentence imposed within or below the Sentencing
5 Guideline range contemplated in this Plea Agreement (while expressly reserving
6 the right to appeal any sentence above the Sentencing Guideline range set forth
7 in this Plea Agreement);

8 (2) The right to appeal the manner in which the Court determined that sentence on
9 the grounds set forth in 18 U.S.C. § 3742; and (c) the right to appeal any other
10 aspect of the conviction or sentence and any order of restitution or forfeiture;

11 (3) Any and all collateral challenges, including any claims under 28 U.S.C. § 2255,
12 to her conviction, sentence, and the procedure by which the Court adjudicated
13 guilt and imposed sentence, except non-waivable claims of ineffective assistance
14 of counsel.

15 Further, defendant agrees and acknowledges that the UNITED STATES is not obligated or
16 required to preserve any evidence obtained in the investigation of this case.

17 C. Removal/Deportation Consequences: Defendant understands and
18 acknowledges that if she is not a United States citizen, then it is highly probable that she will be
19 permanently removed (deported) from the United States as a consequence of pleading guilty
20 under the terms of this Plea Agreement. Defendant has also been advised if her conviction is
21 for an offense described in 8 U.S.C. § 1101(a)(43), she will be deported and removed from the
22 United States and will not be allowed to return to the United States at any time in the future.
23 Defendant desires to plead guilty regardless of any immigration consequences that may result
24 from her guilty plea, even if the consequence is automatic removal from the United States with

1 no possibility of returning. Defendant acknowledges that she has specifically discussed these
2 removal/deportation consequences with her attorney.

3

4 **XIII. ADDITIONAL ACKNOWLEDGMENTS**

5 This Plea Agreement resulted from an arms-length negotiation in which both parties
6 bargained for and received valuable benefits in exchange for valuable concessions. It
7 constitutes the entire agreement negotiated and agreed to by the parties. No promises,
8 agreements or conditions other than those set forth in this agreement have been made or implied
9 by defendant, defendant's attorney, or the UNITED STATES, and no additional promises,
10 agreements or conditions shall have any force or effect unless set forth in writing and signed by
11 all parties or confirmed on the record before the Court.

12 Daniel G. Bogden
13 United States Attorney

14 DATE 11 June 2014


15 Timothy S. Vasquez
Assistant United States Attorney

16 DATE 5/28/2014


17 Kimberly Flores
18 Defendant

19 DATE 5/28/2014


20 Craig W. Drummond
21 Defense Counsel